

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.592 OF 2004**

The State of Maharashtra )  
(through Rural Police Station, Ratnagiri) ) ....Appellant/Complainant

V/s.

1. Babu Bhaga Zore, )  
Age 40 years, Occ.: Nil )  
Residing at Vetoshi, District – Ratnagiri )  
2. Sandeep Janardan Zore, )  
Age 19 years, Occ.: Nil )  
Residing at Vetoshi, District – Ratnagiri )  
3. Dilip Janardan Zore, )  
Age 21 years, Occ.: Nil )  
Residing at Vetoshi, District – Ratnagiri ) .....Respondents/Accused

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Ms. Anamika Malhotra, APP for State – Appellant.

Mr. Jitendra K. Jadhav for respondents.

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**CORAM : K.R.SHRIRAM, J.**

**DATE : 21<sup>st</sup> FEBRUARY 2020**

**ORAL JUDGMENT :**

1           This is an appeal impugning an order and judgment dated 23<sup>rd</sup> January 2004 passed by the Judicial Magistrate First Class, Ratnagiri, acquitting the accused of offences punishable under Section 452 (*House-trespass after preparation for hurt, assault or wrongful restraint*), Section 323 (*Punishment for voluntarily causing hurt*), Section 504 (*Intentional insult with intent to provoke breach of the peace*), Section 506 (*Punishment for criminal intimidation*) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of Indian Penal Code (IPC).

2           It is the case of prosecution that while PW-1 was giving food to his paralyzed father at about 7.30 p.m., the accused entered the house,

which is in their possession, and assaulted PW-1. When the other family members of PW-1 intervened, they were also assaulted. The accused punched and kicked complainant and others in the house. After hearing the shout, neighbors collected and separated them, after which, complaint was filed. Post investigation, chargesheet was filed and accused pleaded not guilty and claimed to be tried. The stand of the accused is of total denial and that the whole thing is an outcome of property dispute and the attempt of complainant is to oust the accused from their ancestral house. Admittedly, the accused and complainant are cousins and there are long standing disputes going on over partition of ancestral property.

3                      Section 452 of IPC reads as under :

*452. House-trespass after preparation for hurt, assault or wrongful restraint. - Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

On a plain reading of the aforesaid provision it is apparent that for the purpose of invoking Section 452 of IPC two requirements are required to be cumulatively satisfied.

To postulate an offence under Section 452 of IPC, it has to be established (a) that the accused committed house trespass and (b) that the same was committed after making preparation for causing hurt to, or for assaulting or for wrongfully restraining, some person, or for putting some person in fear of hurt, or of assault, or of wrongful restraint. If either of the

two requirements is not satisfied Section 452 would not be attracted.

House trespass itself, has been defined in Section 442 of IPC and it reads as under :

*442. House trespass.—Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit “house-trespass”.*

Therefore, a person, who commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for custody of property, is said to commit “house trespass”. Criminal trespass is defined under Section 441 of IPC as under :

*441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.*

Therefore, criminal trespass would be complete if a person enters into or upon the property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property. Criminal trespass will also take in its fold, lawful entry into or upon such property, but unlawful remaining therein, with the aforesaid *mens rea*. Trespass into property, which it is so desirable to guard against unlawful intrusion, as the habitation in which men reside and the building in which they keep their goods was designated as an aggravated form of a

criminal trespass.

4 I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, learned APP and Mr. Jadhav, counsel for respondents. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment.

5 The origin for a charge under Section 452 of IPC, i.e., house trespass, has to go to criminal trespass under Section 441 of IPC. This is because Section 452 provides for “*punishment to a person who commits house trespass.....*”. Therefore, a person has to first commit house trespass. What is house trespass is dealt in Section 442 of IPC, which says “*whoever commits criminal trespass by entering into or remaining in any building .....*”. Section 441 of IPC deals with criminal trespass and it states “*whoever enters into or upon property in the possession of another .....*”.

Therefore, first of all, the accused should be entering into or upon property in possession of complainant.

6 PW-1 – Pandurang Saja Zore, complainant, admits that the accused and he are all cousins. Admittedly, the incident happened in house no.368. PW-1, in the cross examination, states “*it is true that all the ancestral landed properties are joint properties till today. It is true that house no.368 is our ancestral house. .... It is true that my elder brother constructed a house in the ancestral landed property. It is true that house no.368, 369 and 370 were standing in name of Bhaga – the father of accused no.1. ....I*

*again say that the partition took place only regarding the house properties and not landed properties. I have no documentary evidence to show that there was partition of house properties”.*

7 PW-4 states that the spot of offence was house no.368. PW-4, in his cross examination, says *“there are three old houses of the accused and complainant’s family and it is true that house no.368 is their residential house”*. Similarly, PW-6 says *“it is true that house no.368 is the ancestral dwelling house of the accused and complainant”*.

8 Therefore, the primary requirement of entering into or upon property in the possession of another itself is not met. Hence, the offence under Section 452 of IPC has to fail.

9 As regards Section 323 of IPC, the original injury certificate has not been produced though PW-8 – Dr. Manoj Manchekar says that it was given to Police. PW-8 also says he did not find any external injury on the person of Pandurang (PW-1). Dr. Manchekar has deposed that on 23<sup>rd</sup> March 2003 at about 3.15 a.m. injured PW-1 and PW-2 came to Civil Hospital, Ratnagiri and he examined both of them. PW-8 in his report says “injuries were six hours old”. However, according to PW-1, the incident occurred on 21<sup>st</sup> March 2003 at 7.30 p.m. almost 32 hours earlier. Therefore, in my view, the offence under Section 323 of IPC also has not been proved particularly, when no medical certificate of any witness is on record.

10 As regards Section 504 and Section 506 are concerned, there is no evidence of any abuse given by any of the witnesses. Therefore, the charge under Section 504 and Section 506 also has to fail.

11 It more appears to be a fight over ancestral property. No independent witnesses have been examined. The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***<sup>1</sup> in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

*“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;*

*(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;*

*(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;*

*(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.*

*(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

*(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”*

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1. (2007) 4 SCC 415

12           There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

13           In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

14           Appeal dismissed.

**(K.R. SHRIRAM, J.)**